

REMARKS

In accordance with 37 C.F.R. § 1.121 to be amended and the February 25, 2003 Official Gazette, a complete listing of all claims in the application is attached. No claims are amended.

Claims 1- 29 remain in the application. The following remarks are offered in support of allowance of Claims 1- 29. Reexamination and reconsideration of the application in light the following remarks are respectfully requested.

The § 112, Second Paragraph, Rejection

Claims 1-29 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for the phrase “substantially more.” This language is found in the independent claims 1, 9, and 21. The Office stated that “‘substantially more’ in claim 1 line 6 is a relative phrase which renders the claim indefinite.”

This is the fifth office action rejecting the claims for various reasons. The phrase “substantially more” was in the claims as originally filed. As stated in the MPEP §707.07(g), “[p]iecemeal examination should be avoided as much as possible. The examiner ordinarily should reject each claim on all valid grounds available, avoiding, however, undue multiplication of references.” See also, 37 C.F.R. §1.104(b), “[t]he examiner’s action will be complete as to all matters . . .” (Exceptions deleted since not apply). The Examiner is respectfully advised that it is Applicants’ present intention to file a notice of appeal unless the next communication from the Office is a notice of allowance.

Moreover, Applicants submit that the phrase “substantially more” is not indefinite. The MPEP states that definiteness of claim language must be analyzed “in light of: (A) The content of

the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.” MPEP § 2173.02.

It is respectfully submitted that a person of ordinary skill in the art, who had read the teachings and examples in the specification would naturally understand the term “substantially” as used in conjunction with the term “more” to describe a particular characteristic of the claimed invention, the material treated with the composition as recited in Claims 1, 9, and 21. The M.P.E.P. recognizes that the use of the term “substantially” is often definite, depending on context.

M.P.E.P. § 2173.05(b), paragraph D, provides:

The term “substantially” is often used in conjunction with another term to describe a particular characteristic of the claimed invention. It is a broad term. *In re Nehrenberg*, 280 F.2d 161, 126 USPQ 383 (CCPA 1960). The court held that the limitation “to substantially increase the efficiency of the compound as a copper extractant” was definite in view of the general guidelines contained in the specification. *In re Mattison*, 509 F.2d 563, 184 USPQ 484 (CCPA 1975). The court held that the limitation “which produces substantially equal E and H plane illumination patterns” was definite because one of ordinary skill in the art would know what was meant by “substantially equal.” *Andrew Corp. V. Gabriel Electronics*, 847 F.2d 819, 6 USPQ2d 2010 (Fed. Cir. 1988).

In the context of Claims 1, 9, and 21, the phrase “substantially more” is definite. The full expression appearing in the Claims is that “treating the material with a composition comprising an effective amount of a compound selected from the group consisting of nootkatone, zizanol, and bicyclovetivenol, wherein said composition is free of vetiver oil, wherein said material without said treatment is susceptible to termite infestation, and wherein the treated material repels or kills termites **substantially more** than does an otherwise identical material that has not been treated with the compound.” A person of skill in the art would readily understand that this limitation in light of the

claim language and the general guidelines in the application. Once the material is treated with the composition, then the material would have a greater repellence and toxicity to termites than the material without the composition. As stated in the specification, the treatment would cause “significant repellence or toxicity, or that decreases the activity or viability of termites as compared to an otherwise identical environment without the added extract.” Specification, pg. 19, lines 9-13.

A person of ordinary skill in the art would read the specification, especially the examples, and would be able to discern what is meant by substantially more. In each experiment, the material treated with one of the compounds was compared to a material that did not have the compound (the control). See, e.g., Example 2 (page 6, line 7, to page 10, line 16), Example 4 (page 11, line 25, to page 14, line 27), Example 5 (page 15, lines 1-32), Example 6 (page 16, lines 1, to page 17, line 36), and Example 8 (page 18, line 13, to page 19, line 2). With these teachings from the specification, a worker of ordinary skill in the art who readily understand that as directed by Claims 1, 9, and 21, a material would have to be treated with an amount of, for example, nootkatone, such that the material would then repel or kill termites, not just more than the untreated material but substantially more than the untreated material would. As found in the two cases that were cited in the MPEP, Applicants thus respectfully submit that this phrase, as read in light of the specification is definite, and that this rejection should be withdrawn.

The Double Patenting Rejections

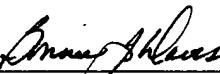
Claims 9-21, 28, and 29 were provisionally rejected under a double patenting as being unpatentable over claims 11, 13-22, 24, 34, and 46 of Applicants co-pending application No. US 2003/0073748. Applicants respectfully submit that these claims have been canceled in that

application which is being examined by the same Examiner. Attached is the December 16, 2003 Amendment Under 37 C.F.R. §1.111 submitted in that co-pending application that indicates Claims 11 - 74 were canceled. Thus due to the cancellation of those claims in the co-pending application, Applicants respectfully submit that this rejection should be withdrawn.

Conclusion

For the reasons discussed, it is respectfully submitted that all pending claims are in condition for allowance. If the Office disagrees with any of these remarks, or if other issues arise that may present an obstacle to allowance, the undersigned requests a telephone interview to discuss such matters before further action is taken to see if an agreement can be reached on moving this case to issuance. Allowance of Claims 1-29 at an early date is solicited.

Respectfully submitted,



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September 13, 2004



PATENT APPLICATION

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: G. Henderson *et al.* Group 1616
Serial No. 09/932,555 Examiner Pryor, A.
Filing Date: August 17, 2001
Title: Extracts of Vetiver Oil as a Repellent and Toxicant to Ants, Ticks, and Cockroaches
Atty File No.: Henderson 01A1

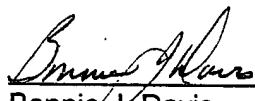
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT UNDER 37 C.F.R. § 1.111

In response to the June 18, 2003 Office Action, please amend the claims as follows:

CERTIFICATE

I HEREBY CERTIFY THAT THIS Amendment Under 37 C.F.R. § 1.111 and a check for \$475 for a three-month extension of time are being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 16, 2003.



Bonnie J. Davis
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December 16, 2003

In the Claims:

Please cancel Claims 11-24.

Remarks:

Claims 11-24 have been canceled. Remaining in the application, are Claims 1-10 which were allowed in the June 18, 2003 Office Action.

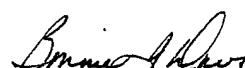
Miscellaneous:

Enclosed is a check for \$475 for a three-month extension of time for a small entity, to extend the time for response from September 18, 2003 to December 18, 2003 (37 C.F.R. § 1.136(a)(3)). If this amount is incorrect, please refer to the Deposit Account Authorization previously filed with this application. If any additional extension of time is required, please consider this paper a petition for the total extension of time required.

Conclusion

If any issues arise that may present an obstacle to allowance, the undersigned would welcome a telephone call to discuss such matters before further action is taken. Otherwise, allowance of Claims 1-10 at an early date is respectfully requested.

Respectfully submitted,



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December 16, 2003



CLAIMS LISTING

- 1 1. (Original) A method for protecting a material from ant infestation, comprising
2 treating the material with an effective amount of a compound selected from the group
3 consisting of nootkatone, α -cedrene, zizanol, and bicyclovetivenol, wherein the treated
4 material repels or kills ants substantially more than does an otherwise identical material
5 that has not been treated with the compound.

- 1 2. (Original) A method as in Claim 1, wherein the ants are fire ants.

- 1 3. (Original) A method as in Claim 1, wherein the treated material repels ants.

- 1 4. (Original) A method as in Claim 1, wherein the treated material kills ants.

- 1 5. (Original) A method as in Claim 1, wherein the material is selected from the group
2 consisting of soil, synthetic polymers, diatomaceous earth, sand, and cellulose-containing
3 materials.

- 1 6. (Original) A method as in Claim 1, wherein the compound is nootkatone.

- 1 7. (Original) A method as in Claim 1, wherein the compound is α -cedrene.

- 1 8. (Original) A method as in Claim 1, wherein the compound is zizanol.

- 1 9. (Original) A method as in Claim 1, wherein the compound is bicyclovetivenol.

1 **10.** (Original) A method as in Claim 1, additionally comprising treating the material with
2 one or more additional, different compounds selected from the group consisting of
3 nootkatone, α -cedrene, zizanol, and bicyclovetivenol.

11.-24. Canceled.

25.-74. Canceled.